

**14 DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**197 OFFICE OF AGING AND DISABILITY SERVICES**

**Chapter 8: GRIEVANCE PROCESS FOR PERSONS WITH AN INTELLECTUAL  
DISABILITY, AUTISM SPECTRUM DISORDER, OR ACQUIRED BRAIN  
INJURY**

**EFFECTIVE DATE: 11/18/2022**

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**TABLE OF CONTENTS**

<b>8.01</b>	<b>PURPOSE AND SCOPE.....</b>	<b>2</b>
<b>8.02</b>	<b>DEFINITIONS .....</b>	<b>2</b>
8.02-1	Advocate.....	2
8.02-2	Case Manager.....	2
8.02-3	Correspondent .....	2
8.02-4	Department .....	2
8.02-5	Developmental Disability and Brain Injury Services .....	2
8.02-6	Grievance .....	2
8.02-7	Grievance Levels .....	3
8.02-8	Grievant.....	3
8.02-9	Guardian .....	3
8.02-10	Hearings Unit .....	3
8.02-11	Person Receiving Services .....	3
8.02-12	Provider .....	3
8.02-13	Protection and Advocacy Agency .....	3
8.02-14	Representative .....	3
<b>8.03</b>	<b>PROCEDURES.....</b>	<b>4</b>
8.03-1	Right of Review .....	4
8.03-2	Notice of Right.....	4
8.03-3	Deadline .....	4
8.03-4	Savings Clause .....	4
8.03-5	Mediation .....	4
8.03-6	Grievance Resolution by Providers.....	4
8.03-7	Grievance Resolution by the Department.....	4
<b>8.04</b>	<b>CONTINUING SERVICES THROUGH PENDENCY OF GRIEVANCE .....</b>	<b>8</b>
<b>8.01</b>	<b>PURPOSE AND SCOPE</b>	

This rule sets forth the Grievance process for persons with an intellectual disability, Autism Spectrum Disorder, or an acquired brain injury who receive services from the Department of Health and Human Services (“the Department”) pursuant to 34-B M.R.S. § 5604. This rule does not apply to grievances against public guardians or conservators pursuant to 18-C M.R.S. § 5-126(1). While the procedures set forth below describe the process for resolving Grievances once they are referred to the Department, individuals and agencies providing services must make reasonable efforts to resolve Grievances and disputes as they arise and must promptly refer to the

Department those matters which have not been resolved at the Provider or agency level. The Department may require Providers to maintain written policies and procedures for that purpose. Persons Receiving Services who receive MaineCare Services are reminded of their right, under Chapter I, Section 1, § 1.24 of the MaineCare Benefits Manual, to appeal a denial, reduction, suspension, or termination of the Person's MaineCare services, within the deadline to file such an appeal imposed in the MaineCare Benefits Manual.

## 8.02 DEFINITIONS

1. **Advocate** means an employee of Maine's Protection and Advocacy Agency, unless a Person Receiving Services has designated another individual or organization to be the advocate, in which case it is that person.
2. **Case Manager** means Department of Health and Human Services case management staff, community case management staff, care coordinator staff or other persons with responsibility for coordinating and/or monitoring the planning process and services for a Person Receiving Services. Case Manager supervisors may perform the functions assigned to Case Managers in this rule and when doing so are included within the definition of Case Manager.
3. **Correspondent** means a person designated by the Maine Developmental Services Oversight and Advisory Board, or its successor, to act as a next friend of a person with an intellectual disability or autism spectrum disorder.
4. **Department** means the Maine Department of Health and Human Services, or its successor.
5. **Developmental Disability and Brain Injury Services** means the program within the Department responsible for the administration of the system of care for eligible persons with an intellectual disability, Autism Spectrum Disorder, or an acquired brain injury.
6. **Grievance** means a complaint by a Person Receiving Services about (1) either an action or inaction by the Department, or a Provider that violates (a) a right or basic protection pursuant to 34-B M.R.S. § 5605, or (b) a Department rule, which violation causes the Person Receiving Services harm or may reasonably and foreseeably cause such harm, or (2) the services or supports presently being provided to the Person Receiving Services.

Grievance includes a complaint regarding:

- A. The planning process for the Grievant;
- B. A violation of other applicable laws;
- C. A violation by a Provider of a requirement of the Provider's license or certification; or
- D. A breach of a contract for services to which the Persons Receiving Services is a party of under which the Person Receiving Services is an intended beneficiary.

7. **Grievance Levels.** Since most Grievances can and should be resolved informally, while others may require a full, formal administrative appeal hearing, the Department has established three, sequential levels in the Grievance resolution process.
  - A. Level I. Review of and attempt to resolve the Grievance by the Case Manager serving the Grievant or by the Protection and Advocacy Agency;
  - B. Level II. Review of and attempt to resolve the Grievance and decisions regarding the Grievance by the Office of Aging and Disability Services (OADS);
  - C. Level III. Administrative hearing pursuant to the Maine Administrative Procedure Act, 5 M.R.S. §§ 9051- 9064.
8. **Grievant** means a person who has submitted a Grievance in conformance with this rule.
9. **Guardian** means the legal guardian of a person, including the Department in its capacity as a Public Guardian.
10. **Hearings Unit** means the State Administrative Hearings Office chosen by the Department to conduct administrative hearings on Grievances arising pursuant to Department rules and regulations.
11. **Person Receiving Services** means a person with an intellectual disability, Autism Spectrum Disorder, or acquired brain injury receiving services from the Department or from an individual, agency, or facility licensed or funded to provide services to persons with an intellectual disability, Autism Spectrum Disorder, or acquired brain injury except those presently in execution of criminal sentences (34-B M.R.S. § 5601(5-A)).
12. **“Provider** means an individual, agency, or facility licensed or funded to provide services to persons with an intellectual disability, Autism Spectrum Disorder, or acquired brain injury who are receiving services.
13. **Protection and Advocacy Agency** means the Governor-designated agency pursuant to 5 M.R.S. § 19502.
14. **Representative**, in the context of this rule, means the Guardian, Correspondent, individual designated by the Person Receiving Services, and/or Advocate for the Person Receiving Services.

### 8.03 PROCEDURES

1. **Right of Review:** Persons Receiving Services and/or their Representatives have the right to submit a Grievance to the Department for review and resolution. The Person Receiving Services or their guardian, if applicable, must consent to any Grievance submitted to the Department.
2. **Notice of Right:** On all notices or decisions made or issued, including notices relating to the personal planning process or under a personal plan of the Person Receiving Services,

the Department shall plainly state that the Person Receiving Services has a right to bring a Grievance and the deadline for doing so. This right shall be stated in language that is easily understood and in bold print and shall include the address and telephone number of the Protection and Advocacy Agency.

3. **Deadline:** The Grievant must submit their Grievance for Level I review one hundred eighty (180) days when the subject of the Grievance is an action or an inaction. Action means something that is done. Inaction means the failure to act. In the event that the Grievant does not become aware of an inaction within the above deadline, the Grievant must file their Grievance within one hundred eighty (180) days of when they first learn about the inaction complained of.
4. **Savings Clause:** Grievances based on an action or inaction prior to the effective date of this rule must be submitted within six (6) months of the effective date of this rule.
5. **Mediation:** The Grievant may elect mediation at any point, which election suspends applicable deadlines. A Grievant may submit a request for mediation by emailing the OADS designated email account.
6. **Grievance Resolution by Providers:** Persons Receiving Services and Providers are encouraged to resolve disputes informally whenever possible. When a Provider is made aware that a Person Receiving Services has a Grievance, the Provider must document the Grievance. Providers must make reasonable efforts to resolve Grievances and disputes as they arise and shall have up to ten (10) calendar days to resolve any Grievance or dispute. The Department may require Providers to maintain written policies and procedures for Grievance resolution.

If the Grievance has not been resolved within ten (10) calendar days, the Provider shall notify the person's Case Manager in writing, who shall in turn document the Grievance in the person's record and commence the Department's Level I Grievance resolution process described below.

Nothing in this rule requires a Person Receiving Services to attempt to resolve their Grievance with the Provider. If they so desire, a Person Receiving Services may directly invoke the Department's Grievance resolution procedure described below.

## 7. **Grievance Resolution by the Department**

### A. **Informal Review**

- (1) Informal Review is offered to provide Persons Receiving Services with supportive and non-confrontational mechanisms for resolving their Grievances. Providers, Case Managers, and the Department shall seek, whenever possible, to resolve Grievances in a supportive and non-confrontational manner. Consistent with informal review, deadlines stated in this subsection may be extended as needed, except for the deadline in paragraph (A)(2)(e) for submitting a Level II Grievance.

(2) Level I Resolution - Case Manager Responsibilities

- (a) Case Managers must make reasonable efforts to ensure that Persons Receiving Services and their Representatives, if any, are aware of their Grievance and appeal rights. A Grievance made by a Person Receiving Services and/or their Representative need not be in writing.
- (b) When a Person Receiving Services has a Grievance, the Case Manager shall immediately document the Grievance in the person's record and notify the Protection and Advocacy Agency. If the person's Grievance is related to their Case Manager, the Persons Receiving Services shall notify the Case Manager's supervisor of the Grievance, who shall immediately document the Grievance in the person's record and notify the Protection and Advocacy Agency.
- (c) The Grievant and/or their Representative may engage the services of the Protection and Advocacy Agency at any time during the Grievance process without attempting to resolve the Grievance with the Case Manager.
- (d) It is the obligation of the Case Manager to work expeditiously toward resolving the Grievance. If the Grievance is resolved, the resolution will be noted in the Grievant's record. If the Grievance cannot be resolved within sixteen (16) calendar days, the Case Manager shall immediately notify the Office of Aging and Disability Services (OADS) with an email sent to the designated email account. The Grievance will be referred to a designated OADS staff member for review and resolution. The Case Manager shall also notify the Grievant, the Grievant's Representative and the Protection and Advocacy Agency in writing that the matter has been referred to Level II.
- (e) If the Case Manager fails to respond to a Grievance within eight (8) calendar days, the Grievant may proceed to the Department's Level II. Notwithstanding anything to the contrary in this rule, the Grievant must submit their Grievance to OADS for Level II Resolution no later than sixty (60) calendar days after submitting the Grievance for Level I Review.

(3) Level II Resolution - OADS Responsibilities

- (a) It is the responsibility of OADS to attempt to resolve Grievances which have not been responded to or resolved at Level I. Upon request, the Case Manager shall supply OADS' designated staff member, the Grievant and/or the Grievant's Representative with documents or information which may be necessary to a fair understanding of the Grievance.

- (b) OADS shall have thirty (30) calendar days to review, attempt to resolve, if appropriate, and issue a Level II Decision on the Grievance. The Grievant and the Department may agree to extend this deadline. The agreement must be made in writing. In conducting this review, OADS' designated staff member may consult with the Department's Program Manager for Developmental Disabilities and Brain Injury Services and may, in their sole discretion, speak to the Grievant and/or their Representative in order to clarify the nature of the problem or to seek out other information which may be necessary to a fair understanding of the issue presented. The OADS designated staff member may review any reportable events, Adult Protective Services (APS) records, and available, recent electronic medical records and services of the Grievant. If the Grievant has designated any Representative(s), OADS must include the Representative(s) in all discussions. Although alternative dispute resolution, such as mediation, is not mandatory, OADS may recommend such procedures to the parties.
- (c) If OADS identifies a possible resolution of the Grievance, OADS will propose such resolution in writing to the Grievant and, as applicable, to their Representative and Case Manager. OADS shall ask that the Grievant respond within twelve (12) calendar days. If the Grievant fails to respond within twelve (12) calendar days, OADS shall issue a decision stating the Department's position on the Grievance within twelve (12) calendar days from the date the response was due by.
- (d) OADS' written decision stating the Department's position on the Grievance must be written in language that is easily understood and shall state:
  - i. The nature of the Grievance;
  - ii. OADS' understanding of the issue;
  - iii. OADS''s position on the Grievance; and
  - iv. The reason(s) for OADS' decision.
- (e) The written proposal or decision shall also state in bold print and in easily understood language that the Grievant and/or their Representative has the right to appeal the decision by requesting a Level III administrative hearing. If there is no written decision within the mandated time period, the Grievant may proceed to Level III. To proceed to Level III, the Grievant, their Representative, or their Case Manager requests a hearing.

B. Formal Administrative Hearing- Level III Resolution

- (1) If a Grievant and/or their Representative decide to appeal OADS' Level II decision or desire to proceed to Level III upon the failure of OADS to comply with the applicable procedures, including time deadlines, the appeal must be:
  - (a) In writing;
  - (b) Addressed to an OADS designated email account; and
  - (c) Made within twelve (12) calendar days of receipt of the decision or OADS' failure to issue a decision as required by §§ 8.03(5)(A)(3)(b) or (c). When the appeal is based upon OADS' failure to issue a decision as required by §§ 8.03-5(A)(3)(b) or (c), the Grievant and OADS' designated staff member can agree to extend this deadline.

The appeal may explain the basis for the objection to OADS' decision or OADS' failure to abide by applicable procedures. The failure to explain the basis for an objection shall not be grounds for dismissal of the appeal.

- (2) A designated OADS staff member monitoring the OADS designated email account will forward the appeal within five (5) calendar days to the OADS' Central Office. The Central Office shall forward the appeal to the Hearings Unit within ten (10) calendar days of receipt of a completed appeal.
- (3) Except as otherwise provided in this rule, the hearing shall be held in accordance with 10-144 C.M.R. ch. 1, Administrative Hearings Regulations. The Commissioner of the Department shall have the discretion whether to reserve the final decision on the Grievance and shall give notice of that decision to the Grievant and Department representative through the Chief Administrative Hearings Officer.
- (4) When the hearing officer issues a recommended decision, the parties may submit to the Commissioner written memoranda, responses, and exceptions pursuant to 10-144 C.M.R. ch. 1. The Commissioner shall issue a final decision either adopting, modifying, or rejecting the hearing officer's recommended decision within thirty (30) calendar days of the date of the recommended decision. In the event the final decision of the Commissioner results in the modification or rejection of the recommended decision, the Commissioner shall state in writing the basis for their decision. In the event the Commissioner should fail to issue a written final decision within thirty (30) calendar days of the date of the recommended decision, the recommended decision of the hearing officer shall be deemed the final decision of the Commissioner.
- (5) The Department's final decision after a hearing constitutes final agency action regarding the Grievance for judicial review purposes pursuant to the Maine Administrative Procedure Act, 5 M.R.S. § 11001(1). All final decisions must include notice of the aggrieved party's right to judicial review, including the requisite timeframe for filing an appeal.

**8.04 CONTINUING SERVICES THROUGH PENDENCY OF GRIEVANCE**

1. Where the Person Receiving Services receives advance notice of an action to not renew, terminate, suspend, or reduce services, and if the Person Receiving Services files a Grievance regarding such non-renewal, termination, suspension, or reduction before the date of action, the person's services currently being provided will not be terminated, reduced, or suspended until:
  - A. Twelve (12) calendar days from receiving a decision on a Level I or Level II Grievance, if the Grievant fails to request further review or appeal of the Level I or Level II decision; or
  - B. Seven (7) calendar days from the date of the Commissioner's final decision on a Level III Grievance, which final decision is rendered following an administrative hearing and a recommended decision from the hearing officer.
2. The filing of a petition for judicial review shall not operate as a stay of the Commissioner's final decision. The requirements for parties to obtain a stay of a final agency action are set forth in the Maine Administrative Procedure Act, 5 M.R.S. § 11004.
3. The "date of action" means the intended date on which a termination, reduction, or suspension becomes effective.

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STATUTORY AUTHORITY: 22-A M.R.S. § 206(4); 34-B M.R.S. § 5604(3)

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